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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 39

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HENRY JACKSON DARBY,
JOSEPH V. QUARLES,
LAWRENCE A. COLE,
Counsel for Petitioner.

(34,020)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petition of J. R. WHEELER respectfully shows to this Honorable Court:

1. That the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, at all the times hereinafter mentioned was and now is a Joint Stock Land Bank duly organized and existing under and by virtue of the Federal Farm Loan Act of the United States, with a capital of $1,200,000 divided into twelve thousand shares of the par value of one hundred dollars each, all of which are issued and outstanding.

2. That said Bank prior to the first day of July, 1927, was operating as such Joint Stock Land Bank at the city of Milwaukee in the state of Wisconsin. That on said day the Federal Farm Loan Board by its order appointed Howard Greene of the city of Milwaukee receiver for said Bankers Joint Stock Land Bank of Milwaukee under the authority conferred by Section 29 of the Federal Farm Loan Act.

3. That on said first day of July, 1927, said Howard Greene as such receiver took possession of the books, records and assets of every description of said Bank, and still has the same in his possession.

4. That on the eleventh day of January, 1928, the Federal Farm Loan Board made and levied an assessment and requisition upon the shareholders on July 1, 1927, of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000, the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the first day of March, 1928, and made demand upon each shareholder for the amount of the par value of the shares held by him, and directed to said receiver to take all necessary proceedings by suit or otherwise to enforce the liability of the said shareholders (R. 4).

5. That your petitioner is a citizen of the state of Wisconsin, and a resident of the city of Milwaukee in the Eastern District of said state.

6. That on and prior to the first day of July, 1927, your petitioner was and ever since has been the holder

of fifty shares of stock of said Bankers Joint Stock Land Bank of Milwaukee.

7. That said respondent made demand upon your petitioner for the sum of five thousand dollars ($5,000), being the aggregate amount of the par value of the capital stock so held by your petitioner, and upon failure of your petitioner to pay the same said respondent instituted an action in the District Court of the United States for the Eastern District of Wisconsin against your petitioner, to recover said sum (R. 2).

8. That your petitioner filed a general demurrer to the complaint in said action (R. 7), and after argument the demurrer to the complaint was sustained on the 16th day of May, 1928 (R. 7), and on the second day of June, 1928, the respondent having elected to stand upon his complaint, judgment was entered dismissing the action (R. 9).

9. That thereafter respondent took an appeal to the United States Circuit Court of Appeals for the Seventh Circuit (R. 10-12).

10. That said appeal was argued before said United States Circuit Court of Appeals on the 16th day of October, 1928. That said court on the 13th day of December, 1928 rendered its decision reversing the judgment of the United States District Court for the Eastern District of Wisconsin.

11. That a certified copy of the entire record of said case in the said Circuit Court of Appeals is hereby furnished, attached to and made a part of this application, and marked Exhibit "A."

12. That your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of Section 240, Judicial Code.

13. That the said Circuit Court of Appeals held that the Federal Farm Loan Board had the right to make an assessment of and to enforce the personal liability of stockholders, and that the receiver appointed by them has the right to enforce the stockholders' personal liability by action at law. That the Federal Farm Loan Act does not grant to said Federal Farm Loan Board any right to make any assessment or collection of the personal liability of the stockholders, and the Act does not authorize the receiver to enforce such liability. That such personal liability is not an asset of the Bank, and does not pass to the receiver, but is a personal guaranty to creditors and can be enforced solely by them or their representative.

14. That said Federal Farm Loan Act, Section 961, is copied almost *verbatim* from the National Banking Act, Section 192, but omits the authority expressly granted by the Banking Act to enforce the individual liability of the stockholders.

15. That it is of the greatest importance to all stockholders and bondholders in Joint Stock Land Banks and Farm Loan Associations and Federal Land Banks, which are governed by the same law, to know whether this personal liability of the stockholders is enforce-

able by the Federal Farm Loan Board through its receiver, or by the creditors of the Bank through an equity action in accordance with the established practice.

16. That on June 30, 1928, according to the report of the Treasury Department upon Joint Stock Land Banks as of that date, there was outstanding capital stock in such Joint Stock Land Banks to the amount of $41,590,960.24, and bonds to the amount of $591,735,600.00 (P. 7). In the Federal Land Banks there was outstanding capital stock to the amount of $63,886,000.00 (*Ibid.* 1). In the Farm Loan Associations, according to the Eleventh Annual Report of the Federal Farm Loan Board for the year ending December 31, 1927, there were in existence and operating 4669 Farm Loan Associations. There have been 456,036 loans made by these associations (P. 71). Since a loan can only be made to a stockholder, that number approximately represents the number of stockholders of the Farm Loan Associations.

17. That there are three Joint Stock Land Banks in receivership, and in these proceedings the personal liability of stockholders may have to be enforced. That there are bonds outstanding and in default issued by said Banks to the amount of $61,518,600.00 (Report of Treasury Department, June 30, 1928 (P. 27), with outstanding stock of $5,250,000.00. In the Milwaukee Bank with $1,200,000 of capital stock, there are 488 stockholders. In the Kansas City Bank with $3,800,000 of capital stock, there are about 1,800 stockholders,

and in the Cincinnati Bank with $250,000 of capital stock, there are stockholders.

18. It is therefore a matter of great public interest to have the law definitely determined as to who has the right to enforce the personal liability of the stockholders of these Banks, and Associations. That this important question of federal law has not been, but should be settled by this court. That the federal question involved in this action was decided by the United States Circuit Court of Appeals in a way probably in conflict with applicable decisions of this court.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case, entitled Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Appellant, *vs.* J. R. Wheeler, Appellee, No. 4065, to the end that the said case may be reviewed and determined by this court as provided by Section 240, Judicial Code, and that your petitioner may have such further or other relief or remedy in the premises as this court may deem proper and in conformity with said provisions of the Judicial Code, and that the said judgment of the said

Circuit Court of Appeals in the said case, and every part thereof may be reversed by this Honorable Court.

J. R. WHEELER,
Petitioner.

HENRY JACKSON DARBY,
J. V. QUARLES,
LAWRENCE A. COLE,
Of Counsel.

STATE OF WISCONSIN,
Milwaukee County, ss:

J. R. WHEELER, being first duly sworn on oath, deposes and says that he is the petitioner in the above entitled action; that he has read the above and foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

J. R. WHEELER.

Subscribed and sworn to before me this sixth day of February, 1929.

[SEAL.]

J. V. QUARLES,
Notary Public, Wisconsin.

Commission expires Oct. 4th, 1931.

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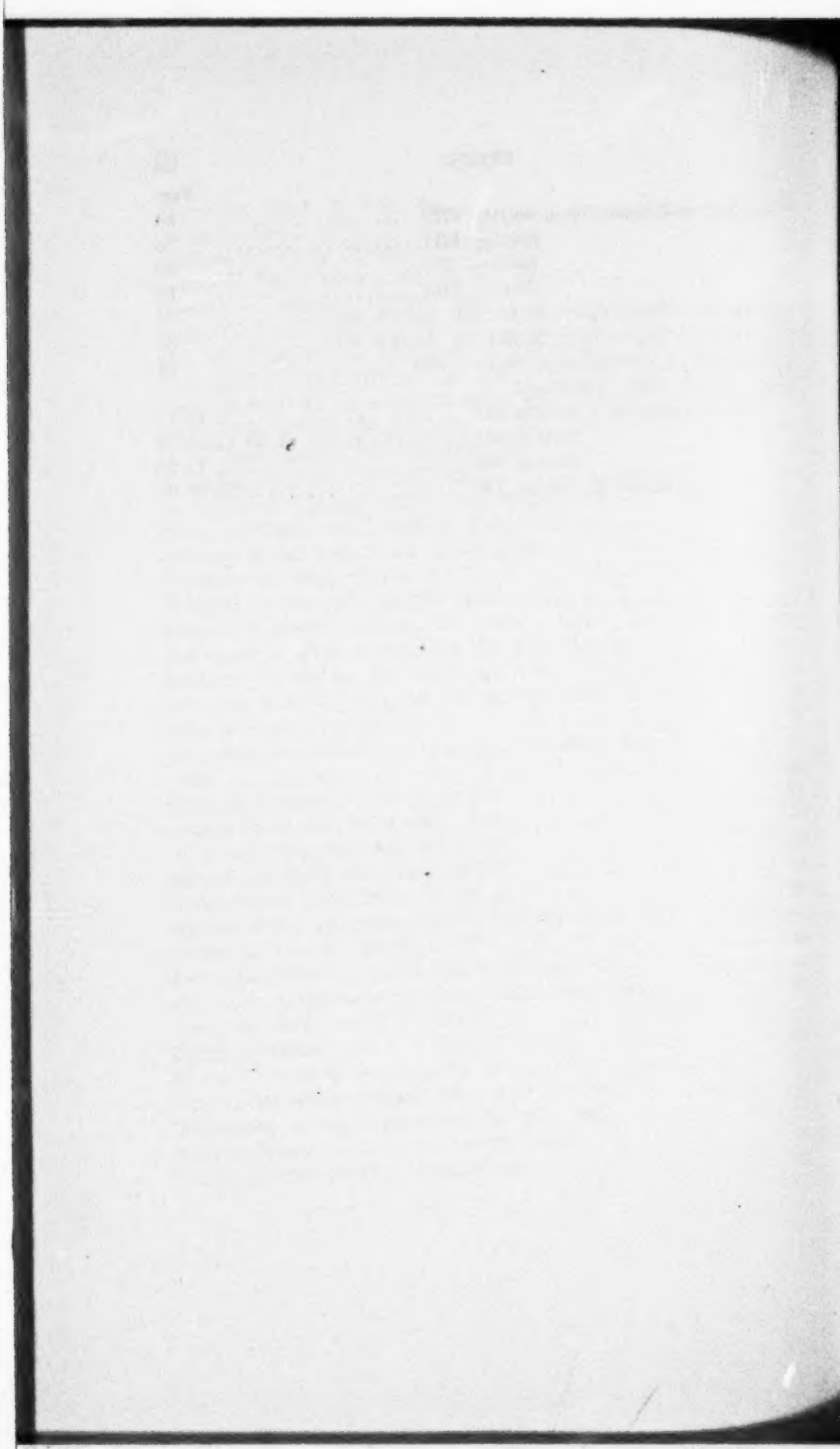

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

Brief of Petitioner for Writ of Certiorari to Review the Decision in the Case of Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Against J. R. Wheeler, Reported in 29 Federal Reporter (2nd), 468.

The jurisdiction of this Honorable Court is invoked under Section 347 of the Judicial Code on the ground:

1. That the Circuit Court of Appeals for the Seventh Circuit has in this case decided an important question of federal law which has not been, but should be settled by this court.

2. That it has decided a federal question in a way probably in conflict with applicable decisions of this court.

The decision sought to be reviewed is dated December 13, 1928 (R. 24-33).

Statement of the Case.

This is an action brought in the United States District Court for the Eastern District of Wisconsin by the receiver of a Joint Stock Land Bank to recover the full amount of the defendant's statutory liability as a stockholder of the Joint Stock Land Bank in an action at law against the stockholder alone.

The complaint (R. 2) recites the appointment of the receiver, the levying of an assessment of the par value of the stock by the Federal Farm Loan Board, and a direction by it to the receiver to enforce the individual liability of the stockholders, demand and refusal to pay.

Issue was joined on the complaint by general demurrer (R. 7), which was sustained by the trial court, and judgment entered thereon on the second day of June, 1928 (R. 9). Respondent appealed from that judgment to the Circuit Court of Appeals for the Seventh Circuit (R. 10-12), which reversed the judgment of the trial court (R. 33).

Assignment of Errors.

1. The court erred in holding that the Farm Loan Board has the right to make an assessment upon

stockholders of Joint Stock Land Banks upon their personal liability as such stockholders.

2. The court erred in holding that the receiver appointed by the Farm Loan Board had the power to bring a suit at law to enforce the personal liability of stockholders.

Summary of Argument.

The statutory liability imposed upon stockholders in Joint Stock Land Banks to the amount of the stock held by them is a personal guaranty to creditors of the bank.

This liability is not an asset of the bank, and does not pass to the receiver appointed by the Farm Loan Board.

It can be enforced only by the creditors or their representatives in the absence of express statutory authority.

The Federal Farm Loan Act granted to the Farm Loan Board powers in connection with the Joint Stock Land Banks particularized and defined in great detail, but makes no mention of any power with regard to the personal liability of the stockholders, the filing and allowance or payment of claims, or the return of surplus to the stockholders, and no such powers are granted to its receiver.

The Federal Farm Loan Act is copied practically verbatim from the National Banking Act, with the exception that it omits the grant of power to the receiver to enforce the personal liability of stockholders.

This omission is intentional, and is made for the purpose of enabling the affairs of the bank to be litigated and wound up at its domicile, and to enable the stockholders to have a voice in the determination of their liabilities.

There is therefore no authority on the part of the Farm Loan Board to assess stockholders upon their personal liability, nor any power in their receiver to sue at law to collect it.

Where no specific provision is made in the law for the enforcement of the personal liability of stockholders, it must be enforced by a creditor's action in equity.

This is the method employed under the National Banking Act in case of voluntary liquidation.

It was intended by Congress that that method should be followed in cases of the Joint Stock Land Banks.

The Circuit Court of Appeals erred in holding that the power to enforce the liability of the stockholders and to liquidate the corporation, was implied.

ARGUMENT.

The Question at Issue.

The only question involved is whether the receiver of a Joint Stock Land Bank appointed by the Federal Farm Loan Board can maintain an action at law to enforce the payment of a one hundred per cent assessment upon stockholders of the bank levied by the Federal Farm Loan Board upon the receiver's preliminary report.

I. The Assessment by the Farm Loan Board.

The first step in the proceeding to enforce the liability of the stockholders was the action by the Federal Farm Loan Board shown in Exhibit A of the complaint (R. 4-5), reading:

> "To whom it may concern:
>
> Whereas, upon consideration of the report submitted on January 9, 1928, by the receiver of the Bankers Joint Stock Land Bank of Milwaukee, Howard Greene of Milwaukee, Wisconsin, appointed on July 1, 1927, by the Federal Farm Loan Board pursuant to the provisions of section 29 of the Federal Farm Loan Act, and a valuation of the assets of said bank in his hands as such receiver, it appears to the satisfaction of the Federal Farm Loan Board that for the payment of the debts of the said Bankers Joint Stock Land Bank of Milwaukee it is necessary to enforce the individual liability under Section 16 of the Federal Farm Loan Act of the shareholders of said Bank;
>
> Now, therefore, by virtue of the powers vested in it by law, the Federal Farm Loan Board hereby makes and levies an assessment and requisition upon the shareholders on July 1, 1927 of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000.00, being the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the 1st day of March, 1928, and hereby makes demand upon each and every one of said shareholders for the amount of the par value of

each and every one of his respective shares of the capital stock of said Bank; and hereby directs the said Receiver to take all necessary proceedings, by suit or otherwise, to enforce the said liability of the said shareholders.

The Receiver is authorized to grant an extension of time, without interest, to any shareholder who pays 25 per cent of the said assessment on or before March 1, 1928, and who gives a written obligation, satisfactorily guaranteed, to pay 25 per cent additional on or before April 1, 1928, 25 per cent additional on or before May 1, 1928, and the remaining 25 per cent on or before June 1, 1928.

In witness whereof the said Federal Farm Loan Board has caused this instrument to be executed at the city of Washington in the District of Columbia, this 11th day of January, 1929.

FEDERAL FARM LOAN BOARD,
By CHESTER MORRILL,
Secretary and General Counsel."

The Farm Loan Board here states that it has considered the receiver's report and appraisal, that it is satisfied that it is necessary to enforce the individual liability of the shareholders of the bank, and instructs the receiver to enforce collection of the full amount thereof by suit.

II. Powers Granted to Federal Farm Loan Board.

The first inquiry is as to what power has been granted to the Farm Loan Board to warrant any such action.

The powers granted to the Federal Farm Loan Board are very specific and are granted in detail, for instance:

Section 656, Chapter 7, Title 12, U. S. C. A. provides for the appointment of registrars, deputy registrars, appraisers, examiners, bank appraisers and bank examiners.

Section 658 authorizes the Board to fix the compensation of appraisers and inspectors.

Section 659 authorizes the Board to employ attorneys, experts, assistants, clerks, laborers and other employees to conduct the business of the Board, and to fix their salaries.

Section 662 obligates the Board to require examinations and reports of the condition of all Land Banks and to publish the results thereof, also to make appraisals of farm lands and prepare and publish amortization tables.

Section 663 requires the Board to prescribe a form for the statement of condition of Farm Loan Associations and Land Banks.

Section 664 makes it the duty of the Board to prepare and issue bulletins and circulars, the contents of which are specified.

Section 672 authorizes the Board to establish Federal Land Banks.

Section 673 gives the Board the power to select temporary directors for Land Banks and to fix their compensation.

Section 675 authorizes the Board to make changes or additions to organization certificates of Farm Loan Banks.

Section 678 authorizes the Board to appoint district directors of Federal Land Banks.

Section 679 authorizes the Board to divide each Land Bank district into divisions.

Section 681 provides that the Board shall appoint district directors for specific terms, and select a director at large who may be removed by the Board.

Section 694 authorizes the Board to direct the voting of stock in Federal Land Banks.

Section 695 makes it their duty to open books of subscription for the capital stock of Federal Land Banks.

Section 713 authorizes the Board to approve the payment of salaries to directors and officers of Farm Loan Associations.

Section 714 requires the Federal Farm Loan Board to approve the bond of the Secretary-Treasurer of Farm Loan Banks.

Section 719 gives the Board the power to grant or refuse charters to Farm Loan Associations.

Section 721 gives the Board control over the redemption of stock of Farm Loan Associations.

Section 741 gives the Board the discretion to prohibit loans on farm land mortgages.

Section 743 authorizes the Board to prescribe rules and regulations governing commissions on interest payments.

Section 754 requires the Board to prescribe forms for appraisal reports for Loan Associations and Land Banks.

Section 755 authorizes the Board to direct examinations, appraisals and investigations.

Section 761 (*3*) authorizes the Board to fix charges to be made against borrowers.

Section 771 (*2*) authorizes the Board to make rules and regulations for the retirement of loans.

Section 771 (*4*) (*b*) authorizes the Board to define farm equipment and (*c*) improvement.

Section 771 (*8*) authorizes the Board to make forms for applications for loans.

Section 771 (*9*) authorizes the Board to fix the amount of insurance on all buildings upon which loans are made, and to make regulations for the use of insurance money for reconstruction of destroyed buildings.

Section 771 (*10*) provides that the Board shall prescribe the form and conditions of an agreement to be signed by every borrower.

Section 781 gives the Board supervision over the issuance of farm loan bonds.

Section 781 (*4*) (*b*) gives the Board control as to the length of time a bank may hold real estate.

Section 781 (*9*) gives the Board power to make rules and regulations governing the charging of borrowers for the cost of appraisals and determination of title.

Section 801 permits the Board to authorize Land Banks to make loans through agents provided by it.

Section 808 gives the right to the Board to prohibit loans by agents.

Section 817 requires the Board to direct the distinguishing marks on bonds of Federal Land Banks.

Section 821 requires the Board to prescribe the form of the bonds of Joint Stock Land Banks.

Section 822 requires the Board to approve of the method of voluntary liquidation of Joint Stock Land Banks.

Section 823 requires the Board to approve of the acquisition of the assets of one Joint Stock Land Bank by another.

Section 841 requires the Board to approve the issue of bonds of Federal and Joint Stock Land Banks.

Section 842 requires the Board to make investigation and appraisal of securities, and to grant or reject an application for the issuance of bonds.

Section 853 requires the Board to approve the depositary of securities.

Section 856 gives the Board power to call upon a Land Bank for additional security.

Section 861 authorizes it to fix denominations, amounts and terms of bonds.

Section 862 provides that the Board shall prescribe rules and regulations concerning the payment and retirement of bonds.

Section 864 provides that the Board shall approve the form of Farm Loan bonds, and order their delivery, the reimbursement to the Secretary of the Treasury for the expense of their preparation, and the prescription of rules and regulations for the exchange into registered bonds.

Section 872 requires the Board to assess losses against Land Banks.

Section 881 requires the Board to pass upon an application for the consolidated issue of bonds.

Section 882 requires the Board to make an assessment upon Land Banks in proportion to their capital stock in case of default.

Section 884 requires the Board to pass upon the amount of isue, rate of interest and the participation of banks in consolidated bonds.

Section 893 gives the Board the discretion to fix the place of and to prescribe rules and regulations for the payment of bonds.

Section 914 requires the Board to make rules and regulations as to the investment of reserves.

Section 951 requires the Board to appoint Land Bank examiners.

Section 952 gives the Board the right to direct the examination of National Farm Loan Associations.

Section 953 gives the Board the right to fix the salaries of Land Bank examiners.

Section 961 authorizes the Board to declare an association insolvent, to appoint a receiver and fix his bond, and to direct the sequestration of the assets of the bank, and to approve the sale of its assets on such terms as it may direct.

Section 962 requires the receiver to deposit all moneys subject to the order of the Board.

Section 963 authorizes the Board to declare insolvent and place in the hands of receivers Federal and Joint Stock Land Banks.

Section 964 authorizes the Board to determine the contingent liabilities of Farm Loan Associations.

Section 965 gives the Board the right to withhold or grant consent to voluntary liquidation of Farm Loan Associations, Federal or Joint Stock Land Banks, and to fix rules and regulations for consolidation of Farm Loan Associations.

Section 972 authorizes the Board to declare mortgages ineligible as a basis for an issue of bonds.

Section 991 authorizes the Board to call upon the Secretary of the Treasury to make deposits for temporary use of a bank, and to request the Secretary of the Treasury to purchase bonds.

In addition to this very detailed enumeration of powers is *Section 831,* headed "Powers of Federal Farm Loan Board Generally" which provides as follows:

> *Section 831.* ENUMERATION.—The Federal Farm Loan Board shall have power—
>
> (*a*) ORGANIZING AND CHARTERING BANKS AND LOAN ASSOCIATIONS; AUTHORIZING INCREASE OF STOCK.—To organize and charter Federal land banks, and to charter national farm loan associations and joint stock land banks subject to the provisions of this chapter, and in its discretion to authorize them to increase their capital stock.
>
> (*b*) REVIEWING AND ALTERING INTEREST RATES.—To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this chapter, said rate to be uniform so far as practicable.

(*c*) GRANTING OR REFUSING AUTHORITY TO ISSUE BONDS.—To grant or refuse to Federal land banks, or joint stock land banks, authority to make any specific issue of farm loan bonds.

(*d*) MAKING RULES AND REGULATIONS AS TO CHARGES ON LOANS.—To make rules and regulations respecting the charges made to borrowers on loans under this chapter for expenses in appraisal, determination of title, and recording.

(*e*) REQUIRING REPORTS, ETC.; EXAMINING BANKS AND ASSOCIATIONS.—To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this chapter.

(*f*) PRESCRIBING FORM AND TERMS OF BONDS AND SURETY BONDS.—To prescribe the form and terms of farm loan bonds, and the form, terms, and penal sums, of all surety bonds required under this chapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

(*g*) REGULATING PAYMENTS BETWEEN BANKS.—To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement.

(*h*) SUSPENDING OR REMOVAL OF DIRECTORS, REGISTRARS, APPRAISERS, AND EXAMINERS.—To suspend or to remove for cause any district di-

rector or any registrar, appraiser, examiner, or other official appointed by said board under authority of sections 651-664 of this chapter, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank.

(*i*) EXERCISING SUPERVISORY AUTHORITY OVER BANKS.—To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

(*j*) INCIDENTAL POWERS.—To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

Nowhere in this most minute particularization of the Board's powers, which are detailed even to the power to prescribe the form of a surety bond and the application for a loan, is there found any suggestion of a right to enforce the stockholders' personal liability, or to take any action in connection therewith. No mention is anywhere made of any power to estimate the assets and obligations of a bank and to determine whether all or any portion of the individual liability of the shareholders is necessary to pay claims, and to make an assessment therefor.

III. POWERS NOT GRANTED TO THE FEDERAL FARM LOAN BOARD ARE:

1. The power to examine the assets and liabilities of a bank and determine the necessity for enforcement of the stockholder's liability.

2. The power to determine the amount of stockholder's liability to be enforced.

3. The power to levy an assessment upon stockholders.

4. The power to enforce the collection of stockholders' liability by suit at law.

5. The power to authorize the receiver to collect and enforce stockholders' liability.

6. The power to give notice to claimants against the banks to file claims.

7. The power to provide for the time limit within which claims may be filed.

8. The power to provide for the allowance of claims.

9. The power to compromise or adjust claims.

10. The power to pay dividends upon claims.

11. The power to defray the expenses of the receivership.

12. The power to return the remaining proceeds to the stockholders.

These powers all relate to the liquidation and winding up of the bank and are essential to that operation. It is impossible that they should have been overlooked. The most important function that the Board could possess as far as the public and the stockholders are concerned would be this right to levy and collect the amount of the personal liability of the stockholders, and to allow and pay claims. The magnitude of this

power can be visualized when it is realized that the capitalization of the Joint Stock Land Banks is $41,590,960.24 (Report of the Treasury Department upon Joint Stock Land Banks, June 30, 1928, P. 7). This does not include Federal Land Banks, whose aggregate capitalization as of June 30, 1928, was $63,886,000.00 (*Ibid.* 1), nor of the Farm Loan Association, whose capitalization runs into the millions, and the number of whose stockholders is approximately 450,000.

All of the stockholders in these institutions are liable to assessment for the full amount of their stock.

IV. The Court Held That the Powers Not Granted are Implied.

The court held that these powers covering the entire field of liquidation are implied and need not be specified. Would Congress enumerate the Board's powers even to particularizing as to the suspension of an appraiser and the form of a surety bond, and fail to mention these most important of all powers, involving the rights of every creditor and the liability of every stockholder in the Joint Stock Land Banks, the Federal Land Banks and the National Farm Loan Associations, and running into the billions of dollars?

With regard to the right to exercise these great powers the appellate court said:

> "We are of opinion that without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete

means of liquidating the assets of insolvent concerns under the supervision, direction and control of the Board" (R. 32),

and therefore held that the Board had implied power to make the assessment and enforce it.

The entire basis for this implied power is Paragraph (*i*) and Paragraph (*j*) of Section 831, which provide as follows:

> SECTION 831. ENUMERATION.—The Federal Farm Loan Board shall have power
>
> • • • • • • •
>
> (*i*) EXERCISING SUPERVISORY AUTHORITY OVER BANKS.—To exercise general supervisory authority over the Federal Land Banks, the National Farm Loan Associations and the Joint Stock Land Banks herein provided for.
>
> (*j*) INCIDENTAL POWERS.—To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

The right to enforce the stockholders' liability, which is a personal guaranty to creditors, entirely distinct and separate from the assets of the bank and in no wise under the control of the bank, is certainly not included within the words "General Supervisory Authority Over Banks" mentioned in paragraph (*i*) nor is it incidental to fulfilling the duties of the Board as outlined in this chapter, since nowhere in the chapter are any duties imposed upon the Board in connection

with the personal liability of stockholders. The Board has no powers which are not granted to it by statute, and authority for all of its activities must be deducible from some legislative grant.

If Congress had made no effort to enumerate or specify the powers of the Farm Loan Board and had made one general grant of powers covering the entire field, there might have been a basis for respondent's argument, but when the powers of the Board are specifically enumerated and itemized in the greatest detail, even in relation to the most unimportant duties of the Board, there is no basis for it. By the grant of incidental powers Congress meant to bestow such powers as are necessarily incident to the powers specifically granted and enumerated. This great power to levy and assess for double liability of stockholders cannot be logically claimed to be included under such a grant, for the Board has been given no duties with regard to the assessment, determination or collection of the personal liability of stockholders. It is impossible therefore for this power to be incidental to the performance of the duties of the board.

V. If There is No Deficit, the Shareholders Are Not Liable.

If the prices of farm lands continue to rise, it is possible that the assets of the bank may be sold for sufficient to pay the obligations of the bank in full. In such a case there would be no obligation upon the shareholder to pay. If the prices of farm lands should rise sufficiently to pay three fourths of the claims

against the bank, the shareholder would be liable but for a fraction of his statutory liability.

There is no provision in the law authorizing the Board to estimate the amount of claims against the bank, or to value its assets and determine a deficit. There is no provision in the law authorizing the repayment to shareholders of any overpayment by them of any portion of their liability which may not be necessary to pay claims.

Under this state of the law there is no warrant or authority on the part of the Farm Loan Board to demand full payment from every shareholder of the full amount of his stock before there has been any liquidation or determination of the amount of the claims, or the amount realizable from the assets. If less than the full amount of the stockholders' liability is necessary to pay the claims in full no action can be maintained against the shareholder to recover this liability in an action at law, for only a court of equity can apportion between the shareholders ratably the amount of their liability. *Kennedy vs. Gibson*, 8 Wallace 498.

The obligation of the shareholder is to pay his ratable proportion of such claims as cannot be paid out of the assets of the bank, and he is not obligated to pay the full amount of his stock upon the estimate of the Farm Loan Board before any claims have been allowed, and then trust to good fortune to receive a rebate of whatever may not be necessary.

VI. Powers of the Receiver.

The second step in the enforcement of personal liability of the stockholders in this case was the demand

made by the receiver upon the shareholders for the par value of their respective shares of the capital stock. After demand was made, the receiver instituted this action to enforce collection of the amount of petitioner's stock. The second question therefore arises as to the power of the receiver to enforce the shareholder's personal liability by suit.

The appointment of a receiver is provided by *Section* 963 *of Chapter* 7, *Title* 12, *U. S. C. A.*, which provides as follows:

> "Upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations."

"This Section" referred to, is *Section* 961 providing for the appointment of receivers for Farm Loan Associations, and provides as follows:

> "Upon receiving satisfactory evidence that any National Farm Loan Association has failed to meet its outstanding obligations of any description, the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver, and require of him such bond and security as it deems proper. * * * Such receiver under the direction of the Federal Farm Loan Board shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and with the approval of the Federal Farm Loan Board or upon the order of a

court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like approval or order may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct."

The powers and duties of the receiver arise from and are defined by this section. He can have no other, further or different powers. He is simply an agent to perform the outlined duties. He has none of the general powers of a receiver of a court of equity.

McDonald vs. State of Nebraska, 101 Fed. 171, 173.

Wallace vs. Hood, 89 Fed. 11, 22.

King vs. Pomeroy, 121 Fed. 287, 290.

The receiver is simply a collector or conservator of the assets of the bank. He takes possession of the books, records and assets of every description of the association, collects all debts, dues and claims of the association, and with the approval of the Farm Loan Board or a court of record he sells all of the assets of the association (*Section* 961) and pays over all money collected to the treasurer of the United States subject to the order of the Federal Farm Loan Board (*Section* 962). His work is then performed, and he makes report to the Board of his acts (*Section* 962). There is no suggestion anywhere in the law that the receiver has anything whatever to do with the shareholders or their personal liability, or with the creditors of the bank and their claims against it.

VII. Congress Intentionally Refrained from Giving the Receiver Power to Enforce Stockholders' Personal Liability.

At the time of the enactment of the Federal Farm Loan Act, the National Banking Act had been in force for many years. The provisions thereof with regard to the appointment and powers of a receiver are found in *Section* 192, *Chapter* 2, *Title* 12, *U. S. C. A.*:

> "On becoming satisfied as specified in Sections 131 and 132 that any association has refused to pay its circulating notes as herein mentioned, and is in default, the comptroller of the currency may forthwith appoint a receiver and require of him such bond and security as he deems proper. Such receiver under the direction of the comptroller shall take possession of the books, records and assets of every description of such association, and collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like order may sell all the real and personal property of such association on such terms as the court shall direct, *and may if necessary to pay the debts of such association enforce the individual liability of the stockholders.* Such receiver shall pay over all moneys so paid to the treasurer of the United States subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings."

An examination and comparison of this section with *section* 961 above quoted shows that the Farm Loan

Act follows the national banking act word for word with the single exception that there is omitted from *Section* 961 the words contained in *section* 192 printed in italics, namely,

> "and may if necessary to pay the debts of such association, enforce the individual liability of the stockholders."

The wording immediately prior to and after this quotation is identical with that of the banking act.

A comparison of the two acts can be easily made, thus:

Farm Loan Act, Section 961, *U. S. C. A.*

"Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, that no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal Land Bank district, unless such association shall have been in default for a period

Section 192, *U. S. C. A.*

"On becomong satisfied, as specified in sections 131 and 132 that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper.

of two years. Such receiver, under the direction of the Federal Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board, or said court shall direct."

Such receiver, under the direction of hte Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and, on a like order may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.*

Section 962, *U. S. C. A.*

"Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said Board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received."

Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings."

This shows that *Section* 192 of the Banking Act was followed word for word until it came to the provision authorizing the receiver to enforce the individual liability of the stockholders. The section was there ended, that provision omitted and a new *Section* (962) continued the wording of the Banking Act. This action conclusively demonstrates an intentional omission of the grant of power to the receiver to enforce the individual liability of the stockholders.

It is thus seen that all powers with regard to the determination and enforcibility of the personal liability of shareholders, which are contained in the Banking Act, are omitted from the provisions relating to the Federal Loan Board as well as from the provisions relating to their receiver.

VIII. The National Banking Act's Method of Enforcing Personal Liability.

The Banking Act has a complete system for the enforcement of the individual liability of stockholders. *Section* 191, *Chapter* 2, *Title* 12, *U. S. C. A.* authorizes the Comptroller to "appoint a receiver who shall proceed to close up such association and enforce the personal liability of the stockholders." *Section* 192 specifically gives the receiver the right to enforce this liabil ity. *Section* 193 requires the comptroller to give notice by advertising in newspapers for three consecutive months calling on all persons who have claims to present and prove them. *Section* 194 provides for the allowance of claims, the payment of dividends, and the return of the remainder of the proceeds to the shareholders. *Section* 196 provides for the payment of the expenses of the receivership.

In the Farm Loan Act all of these provisions are missing. No provision is made for giving notice to creditors of the bank, for a limitation of the time of filing claims, for the allowance of claims, or the payment thereof, for the return of any surplus to the

shareholders, or for the payment of the expense of the receivership. It is therefore perfectly apparent from the statutes that the receiver of the Farm Loan Association was not intended to have any powers or duties whatever with regard to the enforcement of the individual liability of the stockholders, the proof of claims against the association, their payment and the final distribution.

IX. The Reasons for Withholding From the Receiver the Power to Enforce Personal Liability.

What then was the intention of Congress? Who was to enforce the stockholders' liability, have hearings upon the claims, provide for their allowance and payment, and the ratable division of liability among the stockholders? In such a case where no express provision is made by statute, a court of equity is the tribunal which through the medium of a creditor's action works out all of these subjects. This jurisdiction is perfectly familiar, and has been in use in identical situations for many years. Congress may well have thought that in a matter of this kind affecting a large number of individuals residing in the neighborhood or territory served by the association, that it would be better to have the rights of stockholders and creditors protected by court action at the domicile of the association rather than have it left to the arbitrary disposition of one individual in Washington.

A very potent reason for leaving the liquidation of the bank to the local court is the following: The statutory liability of the stockholders is a guaranty to the

creditors, separate and distinct from the assets of the bank. It is a personal obligation to pay any deficiency which may result in the payment of claims after the assets of the bank have been exhausted. The amount of this guaranty is determined by this deficit. Every stockholder has a right to have a voice in the determination of his liability, to have his day in court before judgment is entered against him upon this contract.

Under the plan worked out by the Court of Appeals a stockholder has no voice in the determination of this liability, no chance to be heard in the ascertainment of the amount of, nor to question the items of expense or loss which are charged against him. An assessment of the full amount of the liability is made by the Farm Loan Board at the outset before any claims are allowed. Suit is immediately brought to enforce payment of this amount with the claim that the amount cannot be controverted, that the Board has the exclusive right to determine the amount of the assessment. The result is that his money is taken from him on a contract of indemnity before any liability on that contract has been established. He has no day in court, no opportunity to litigate the amount of his liability, no right to question the necessity of any assessment at all. This is all accomplished by the Board and the Receiver—neither of whom is liable to suit in the place of the stockholder's residence. This is certainly not due process of law, nor in accord with the basic principles of the common law which give every man a right to litigate the amount of his liability upon any contract or undertaking he may have made.

X. Where no Authority is Given by Statute to Enforce the Liability of Stockholders, it Shall be Enforced Through a Court of Equity.

An entirely analogous situation arose with regard to the National Banking Act prior to the amendment of 1876. The same provisions which are now in that Act were then applicable only to instances of involuntary closing of the bank. The statutes made no reference whatever to the method of working out the same problems in cases of voluntary liquidation of the bank. The question arose as to who was to enforce the stockholders' liability in the case of a voluntary liquidation. The court said:

> "It thus appears that in the case of an involtary liquidation under this section, the business of liquidation, as defined and required by the law, involved the appointment of a receiver, who should, in addition to the collection of the ordinary assets of the bank, also enforce against the stockholders their individual liability, so far as necessary to create a fund sufficient to pay all the debts of the association. It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of voluntary liquidation, left the creditors of such association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. Section 5151 imposes upon the shareholders of every national banking association an individual responsibility for its contracts, debts, and engagements, and the terms in which the obligation is created

are unconditional and unqualified, except that the liability shall be equal and ratable as among the shareholders.

"As all the shareholders are bound in that way to all the creditors, any proceeding to enforce this liability must be such as from its nature would enable the court to ascertain for what the stockholders ought to be made liable, to whom, and in what proportion as respects each other. This can only be done by the methods and machinery of a court of equity."

Richmond vs. Irons, 121 U. S. 27, 48.

Congress later recognized that method of winding up a bank as the proper one by the passage of the *Act of June* 30, 1876, *Chapter* 156, *Section* 2, reading as follows:

"That when any national banking association shall have gone into liquidation, under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders, provided for by section fifty one hundred and fifty one of said statutes, may be enforced by any creditors of such association by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or establish."

This Act is now *Section* 65, *Chap.* 2, *Title* 12, *U. S. C. A.*, and still provides for the enforcement of the shareholders's liability by a creditor's action.

There was therefore in existence at the time of the passage of the Farm Loan Act a practice and method of winding up banks without the interposition of the statutory receiver, and it must be presumed that Congress intended that that well known method should be aplied to the liquidation of these farm loan banks.

To the same effect holding that where no specific method of liquidation is prescribed by statute, it shall be done through a creditor's action is *Williamson vs. American Bank,* 115 Fed. 793.

To the same effect are also the decisions of most of the states including Wisconsin.

In the early case of *Coleman vs. White,* 14 Wis. 700, which was an attempt to enforce the stockholders individual liability as a shareholder of a state bank by an action at law, the court said in denying the right to sue at law:

> "We are persuaded that the remedy should be by suit in equity, in which all the creditors should join, or one or more of them should sue for the benefit of all, and that the action should be against the bank and all the stockholders, unless it be impossible or impracticable to bring them all before the court, or some other sufficient cause for the omission be shown. This conclusion, we think, follows necessarily from the nature of the obligation imposed, it being a liability on the part of all the stockholders, in proportion to the amounts of their respective shares, to all the creditors according to the sums severally due them. It is an indebtedness which a court of law has no power to regulate and adjust, and to which the jurisdiction and powers

of equity are peculiarly and exclusively adapted. The creditors should all join, because they have a common interest in the funds to be realized; or if the action be commenced by one or more of them, the complaint should be so framed that the others may come in and prove their claims before the court or a referee and share in the distribution of the moneys received. All the stockholders should be made defendants, because they too have a common interest, and without their presence it is impossible to adjust their rights and liabilities, and protect them from unequal and oppressive burdens * * * (page 702)."

The court further says, quoting from a Massachusetts case, at page 704:

"It may happen, and probably has happened in this instance, that a bank owes more than the amount of its whole capital. In such case there must either be a *pro rata* division among the creditors, of what may be recovered, which would be impracticable in suits at law, or those who sue first must recover the whole of their debts, leaving others totally remediless, which would be palpably unjust. The evils and inconveniences of attempting to enforce this section by suits at common law would be incalculable; and such remedy would be inadequate, vexatious and mischievous. The only proper means of giving effect to this provision is by a process in equity; and this, of all cases which can arise, seems to call most loudly for a chancery jurisdiction. To a bill in equity all persons, however numerous, might be made parties; and all the relative and conflicting claims

of the many creditors and stockholders settled, and their proportionate rights to recover, and liabilities to contribute adjusted in a single suit. We are all, therefore, of opinion that this case comes within the equity jurisdiction of the court, and that an action at law will not lie."

This decision of the Wisconsin Court has been uniformly applied and approved since in the following cases:

Gianella *vs.* Bigelow, 96 Wis. 185, 71 N. W. 111.
Booth *vs.* Dear, 96 Wis. 516, 71 N. W. 816.
Williams *vs.* Meloy, 97 Wis. 561, 73 N. W. 40.
Rehbein *vs.* Rahr, 109 Wis. 136, 85 N. W. 315.

To the same effect are:

Irons *vs.* Manufacturers Natl. Bank, 17 Fed. 308.
Miller *vs.* Smith, 26 R. I. 146, 58 Atl. 634, 66 L. R. A. 473 (R. I.).
Terry *vs.* Little, 101 U. S. 216.
Arenz *vs.* Weir, 89 Ill. 25.
Ryerson & Son *vs.* Peden, 303 Ill. 171, 135 N. E. 423.
Pfohl *vs.* Simpson, 74 N. Y. 137.
7 Fletcher on Corporations, Sections 4216, 4218.
Way *vs.* Barney, 116 Minn. 285, 133 N. W. 801.
Mills *vs.* Scott, 99 U. S. 25.
Terry *vs.* Tubman, 92 U. S. 156.
Pollard *vs.* Bailey, 20 Wallace 520.

The foregoing cases hold that a court of equity by means of a creditor's action is the only method of

enforcing stockholder's liability where no statutory method is provided.

The Farm Loan Act also recognizes court action with regard to this liquidation, for *Section* 961 provides that the receiver—

> "*Upon the order of a court of record of competent jurisdiction* may sell or compound all bad or doubtful debts, and on a like approval or order may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board *or said court* shall direct."

This provision of the law placing the liquidation of the bank in the hands of the court gives every stockholder a voice in the determination of the amount of the assessment against him. He is entitled to this as a constitutional right, and cannot be, as respondent contended in the lower court, conclusively bound by the determination of the Federal Farm Loan Board to pay the full amount of his stock without having had a chance to raise a question as to the amount of the assessment. He is entitled to his day in court.

XI. The Stockholder's Liability to the Creditors is not an Asset of the Bank.

It is a liability created by statute running *directly to the creditors* as an extra guaranty to insure the payment of their claims. The bank cannot enforce it, and has nothing whatever to do with it. It is not listed among the bank's assets. The bank cannot delegate

an agent or a receiver to collect it. A receiver of the bank cannot even compromise such a claim. It is not a debt to the bank, but to the creditors. The law is thus stated by *Fletcher:*

> "In the absence of provisions to the contrary, the individual liability for corporate debts, imposed upon the stockholders of a corporation by a charter, statutory or constitutional provision, is solely for the benefit of and directly to the creditors, and can only be enforced by them or by someone representing them. The liability is not imposed for the benefit of the corporation, and is not in any sense a part of its assets like unpaid subscriptions for stock, and unless so provided by statute it cannot be enforced by the corporation itself by assessment or otherwise, even for the purpose of raising a fund for the payment of debts."

7 Fletcher Encyclopedia on Corporations, Section 4210.

4 Thompson on Corporations, Section 4801.

Ryerson & Son *vs.* Peden, 303 Ill. 171, 135 N. E. 423.

Arenz *vs.* Weir, 89 Ill. 25, 28.

Courtney *vs.* Georger, 228 Fed. 859.

Re Jassoy Company, 178 Fed. 515.

1 Loveland on Bankruptcy, Section 393.

Remington on Bankruptcy, 2nd Edition, Section 978.

Hilliard *vs.* Lyman, 138 Fed. 469.

In re Crystal Spring Bottling Co., 96 Fed. 945.

In re Beachy & Co., 170 Fed. 825.

Seegmiller *vs.* Day, 249 Fed. 177.

As this personal liability of the stockholders is not assets or property in the hands of the corporation, it does not pass to the receiver, for he takes only the assets of the bank and is merely its assignee. He has no higher or superior rights to the bank. It therefore follows that in the absence of express statutory authority the receiver has no power to enforce the individual liability of the stockholders.

XII. The Receiver Cannot Enforce the Individual Liability of the Stockholder.

As the liability of the shareholder is to the creditors and not to the bank, and does not constitute assets of the bank, it does not pass to the receiver. He therefore has no power whatever to enforce it, unless that power is specifically granted by statute.

> "Since the liability is not an asset of the corporation unless made so by the statute, it does not pass under an assignment by the corporation for the benefit of creditors so as to entitle the assignee to enforce it, nor in the absence of provisions to such effect can the liability be enforced by an assignee in insolvency or a trustee in bankruptcy of the corporation, by an agent appointed by the stockholders to wind up the affairs of the corporation, or by a receiver appointed by a court of equity, whether appointed at the suit of a stockholder or at the suit of a creditor, and whether he is a general receiver invested with 'all the estate, property and equitable interests' of the corporation, or a special receiver appointed for the purpose. 'Neither a receiver nor an assignee in bank-

ruptcy, nor an assignee under a voluntary general assignment for the benefit of creditors, each of whom represents creditors as well as the insolvent, acquires any right to enforce a collateral obligation given to a creditor or to a body of creditors by a third person for the payment of the debts of the insolvent.' "

7 Fletcher on Corporations, Section 4214, and cases cited.

1 Cook on Corporations, Section 218.

Jacobson *vs.* Allen, 12 Fed. 454.

Brown *vs.* Trail, 89 Fed. 641, approving Jacobson *vs.* Allen.

In re Associated Oil Co., 289 Fed. 693.

Zang *vs.* Wyant, 25 Colo. 551, 56 Pac. 565.

Irons *vs.* Manufacturers Natl. Bank, 27 Fed. 591, 593, approving Jacobson *vs.* Allen.

Colton *vs.* Mayer, 90 Md. 711; 45 Atl. 874.

Arenz *vs.* Weir, 89 Ill. 25, 28, approved in Ryerson & Son *vs.* Peden, 303 Ill. 171, 135 N. E. 423.

Fid. Ins. Trust Co. *vs.* Mechanics Savings Bank, 97 Fed. 297.

Hancock Natl. Bank *vs.* Ellis, 166 Mass. 414; 44 N. E. 349.

Minnesota Baseball Co. *vs.* City Bank, 66 Minn. 441; 69 N. W. 331.

Hammond *vs.* Cline, 170 Ind. 452, 84 N. E. 827.

Steinke *vs.* Loofbourow, 17 Utah 252; 54 Pac. 120.

Clapp *vs.* Smith, 22 N. M. 153, 159 Pac. 523.

Evans *vs.* Nellis, 187 U. S. 271.

Mechanics Savings Bank *vs.* Fid. Ins. Trust & S. D. Co., 87 Fed. 113.
Stevirmac Oil Gas Co. *vs.* Smith, 259 Fed. 650.
Alsop *vs.* Conway, 188 Fed. 568.

In Conclusion.

As a result of the study of the National Banking Act and the Farm Loan Act, we find that the Farm Loan Board has been given specific, definite, limited and detailed powers, among which do not appear any powers with regard to the proof, allowance and payment of claims, or the determination and enforcement of stockholders' liabilities; that the powers of the statutory receiver appointed by the Farm Loan Board are defined by the statute in words identical with those of the National Banking Act granting powers to its receiver, with the exception that the power to enforce the liability of stockholders and liquidate the claims of creditors is specifically omitted.

We find that the National Banking Act contains two methods of enforcement of stockholders' liabilities, one in case of involuntary proceedings by the receiver who is specifically authorized to enforce by suit the personal liability of the stockholders (*Section 192, Chapter 2, Title 12, U. S. C. A.*); the second, in case of voluntary proceedings, by a creditor's action in equity in the United States Court for the district in which the bank is located (*Section 65, Chapter 2, Title 12, U. S. C. A.*).

Since Congress in the Farm Loan Act provided for the stockholders' liability and refused to place the enforcement of it in the hands of the Farm Loan Board or its receiver, it must have intended that it should be enforced by the second method above mentioned, and such a suit has in fact been instituted and is now pending by one creditor on behalf of all against all the stockholders of the bank in the Eastern District for the State of Wisconsin.

It is therefore respectfully submitted that the trial court was correct in holding that the receiver appointed by the Farm Loan Board could not sue to recover the personal liability of the stockholders, and that the Circuit Court of Appeals erred in reversing that decision and holding that the receiver had implied powers to make such enforcement, and that the decision of the Circuit Court of Appeals should be reversed.

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